

LEGISLATIVE BILL 18

Approved by the Governor February 10, 2011

Introduced by Adams, 24.

FOR AN ACT relating to the Tax Equity and Educational Opportunities Support Act; to amend section 79-1022.02, Reissue Revised Statutes of Nebraska, and sections 79-1001, 79-1003, 79-1007.07, 79-1007.09, 79-1008.01, 79-1022, 79-1023, 79-1026.01, 79-1027, 79-1028.02, and 79-1031.01, Revised Statutes Cumulative Supplement, 2010; to redefine terms; to provide for distribution of allocations from the federal Education Jobs Fund as prescribed; to change provisions relating to certifications; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 79-1001, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1001 Sections 79-1001 to 79-1033 and section 11 of this act shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Sec. 2. Section 79-1003, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1003 For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years before school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (21) of this section minus the transportation allowance and minus the special receipts allowance, (b) for school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (21) of this section minus the sum of the transportation, special receipts, and distance education and telecommunications allowances, (c) for school fiscal year 2008-09, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, and focus school and program allowance, (d) for school fiscal year 2009-10, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, instructional time allowance, and focus school and program allowance, (e) for school fiscal years 2010-11 through 2012-13, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance, and (f) for school fiscal year 2013-14 and each school fiscal year thereafter, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate

yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 or 79-1005.02 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily attendance of a student who resides on Indian land means average daily attendance of a student who resides on Indian land from the most recent data available on November 1 preceding the school fiscal year in which aid is to be paid;

(5) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(6) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(7) Board means the school board of each school district;

(8) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund. Categorical funds does not include funds received pursuant to section 79-1028.02 or section 11 of this act;

(9) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(10) Department means the State Department of Education;

(11) District means any Class I, II, III, IV, V, or VI school district and, beginning with the calculation of state aid for school fiscal year 2011-12 and each school fiscal year thereafter, a unified system as defined in section 79-4,108;

(12) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(13) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1007.25, 79-1008.01 to 79-1022, and 79-1022.02, and 79-1028.02 and section 11 of this act;

(14) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(15) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(16) Formula students means:

(a) For school fiscal years prior to school fiscal year 2008-09, (i) for state aid certified pursuant to section 79-1022, the sum of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid, multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid and the prior two school fiscal years, plus qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and (ii) for final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus qualified early childhood education average daily membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid was paid; and

(b) For school fiscal year 2008-09 and each school fiscal year thereafter, (i) for state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5 and (ii) for final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily

membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(17) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(18) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(19) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023 and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(20) General fund expenditures means all expenditures from the general fund;

(21) General fund operating expenditures means:

(a) For state aid calculated for school fiscal years prior to school fiscal year 2008-09, the total general fund expenditures minus categorical funds, tuition paid, transportation fees paid to other districts, adult education, summer school, community services, redemption of the principal portion of general fund debt service, retirement incentive plans, staff development assistance, and transfers from other funds into the general fund for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid as reported on the annual financial report prior to December 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(b) For state aid calculated for school fiscal year 2008-09, as reported for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid on the annual financial report submitted prior to December 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, and federal impact aid, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, and (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund;

(c) For state aid calculated for school fiscal year 2009-10, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, and federal impact aid, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, and (iv) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred; and

(d) For state aid calculated for school fiscal year 2010-11 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the

amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (iv) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (v) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, and (vi) (A) expenditures in school fiscal years 2009-10 through 2013-14 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (B) expenditures in school fiscal years 2009-10 through 2013-14 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the Class V School Employees Retirement System to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent.

For purposes of this subdivision (21) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(22) High school district means a school district providing instruction in at least grades nine through twelve;

(23) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(24) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Limited English proficiency students means (a) for school fiscal years prior to school fiscal year 2009-10, the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid and (b) for school fiscal year 2009-10 and each school fiscal year thereafter, the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with limited English proficiency minus the average number of limited English proficiency students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(26) Local system means a learning community for purposes of calculation of state aid for the second full school fiscal year after becoming a learning community and each school fiscal year thereafter, a unified system, a Class VI district and the associated Class I districts, or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(27) Low-income child means (a) for school fiscal years prior to 2008-09, a child under nineteen years of age living in a household having an annual adjusted gross income of fifteen thousand dollars or less for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated and (b) for school fiscal year 2008-09 and each school fiscal year thereafter, a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being

calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(28) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(29) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(30) Poverty students means (a) for school fiscal years prior to school fiscal year 2009-10, the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, and (b) for school fiscal year 2009-10 and each school fiscal year thereafter, the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(31) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(32) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(34) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(35) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(36) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a) (i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b) (i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c) (i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d) (i) Less than two formula students per square mile in the local

system and (ii) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system;

(37) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(38) Special grant funds means the budgeted receipts for grants, including, but not limited to, Title I funds, Title VI funds, funds from the Education Innovation Fund, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(39) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(40) State board means the State Board of Education;

(41) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(42) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(43) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(44) Teacher has the definition found in section 79-101;

(45) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(46) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency; and

(47) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

Sec. 3. Section 79-1007.07, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1007.07 ~~(1)(a) For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:~~

~~(i) The amount of federal funds received based on poverty as defined by the federal program providing the funds; and~~

~~(ii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program and the method used to allocate money to the program and within the program.~~

~~(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the poverty allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(iii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.~~

~~(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the (1)(a) The annual financial report required pursuant to section 79-528 shall include:~~

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the poverty plan submitted pursuant to section 79-1013 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's poverty plan; and

(v) An explanation of how any required elements of the poverty plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

~~(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the~~ (2) The department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that were used to specifically address issues related to the education of students living in poverty or to the implementation of the poverty plan, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in poverty allowance expenditures.

~~(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if~~ (3) If the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures. If the poverty allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

~~(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if~~ (4) If the department determines that the school district did not meet the required elements of the poverty plan for the most recently available complete data year, the department shall calculate a poverty allowance correction equal to fifty percent of the poverty allowance for such school fiscal year and the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated. Any poverty allowance correction calculated pursuant to this subsection shall be added to any poverty allowance correction calculated pursuant to subsection ~~(4)~~ (3) of this section to arrive at the total poverty allowance correction.

~~(6)~~ (5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

~~(7)~~ (6) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to poverty statewide and specific descriptions of the expenditures and funding sources for programs related to poverty for each school district.

~~(8)~~ (7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Sec. 4. Section 79-1007.09, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1007.09 ~~(1)(a)~~ For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:

~~(i)~~ The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the

funds; and

~~(ii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program and the method used to allocate money to the program and within the program.~~

~~(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the limited English proficiency allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(ii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.~~

~~(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the (1)(a) The annual financial report required pursuant to section 79-528 shall include:~~

~~(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;~~

~~(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds;~~

~~(iii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the limited English proficiency plan submitted pursuant to section 79-1014 for such school fiscal year;~~

~~(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's limited English proficiency plan; and~~

~~(v) An explanation of how any required elements of the limited English proficiency plan for such school fiscal year were met.~~

~~(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.~~

~~(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the (2) The department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that were used to specifically address issues related to the education of students with limited English proficiency or to the implementation of the limited English proficiency plan, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in limited English proficiency allowance expenditures.~~

~~(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if (3) If the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.~~

~~(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if (4) If the department determines that the school district did not meet the required elements of the limited English proficiency plan for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction equal to fifty percent of the limited English proficiency allowance for such school fiscal year and the school district shall also be disqualified from receiving a limited English~~

proficiency allowance for the school fiscal year for which aid is being calculated. Any limited English proficiency allowance correction calculated pursuant to this subsection shall be added to any limited English proficiency allowance correction calculated pursuant to subsection ~~(4)~~ (3) of this section to arrive at the total limited English proficiency allowance correction.

~~(6)~~ (5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

~~(7)~~ (6) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to limited English proficiency statewide and specific descriptions of the expenditures and funding sources for programs related to limited English proficiency for each school district.

~~(8)~~ (7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Sec. 5. Section 79-1008.01, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1008.01 ~~Except~~ For all school fiscal years except school fiscal year 2010-11, except as provided in sections 79-1008.02 to 79-1010, each local system shall receive equalization aid in the amount that the total formula need of each local system, as determined pursuant to sections 79-1007.01 to 79-1007.23 and section 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

For school fiscal year 2010-11, except as provided in sections 79-1008.02 to 79-1010, each local system shall receive equalization aid in the amount by which one hundred two and twenty-three hundredths percent of the total formula need of each local system, as determined pursuant to sections 79-1007.01 to 79-1007.23 and section 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

Sec. 6. Section 79-1022, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1022 (1) On or before March 10, 2010, ~~on or before April 1, 2011,~~ and March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall determine the amounts to be distributed to each local system and each district pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, each learning community, and each district. The amount to be distributed to each district that is not a member of a learning community from the amount certified for a local system shall be proportional based on- ~~(a) For school fiscal years prior to school fiscal year 2008-09, the weighted formula students attributed to each district in the local system; and (b) for school fiscal year 2008-09 and each school fiscal year thereafter,~~ the formula students attributed to each district in the local system. The amount to be distributed to each district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before March 10, 2010, ~~on or before April 1, 2011,~~ March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall report the necessary funding level to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. Certified Except as otherwise provided in this subsection, certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024. Increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011, shall not require a school district to revise its previously adopted budget statement pursuant to section 13-511 for school fiscal year 2010-11 unless expenditures are increased in such school fiscal year as a result of such increases in state aid. The amount of such increased state aid that has not been included in an amended budget for school fiscal year 2010-11 shall be included in the unencumbered cash balance pursuant to section 13-504 for the school fiscal year 2011-12 budget for each school district.

(2) Except as provided in this subsection, subsection (8) of section

79-1016, and sections 79-1033 and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year. For school fiscal year 2010-11, payments shall be based on the amounts certified pursuant to subsection (1) of this section on March 10, 2010, except that on the last business day of April, the department shall make federal Education Jobs Fund allocations available pursuant to section 11 of this act equal to any increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011, rounded to the nearest whole dollar.

Sec. 7. Section 79-1022.02, Reissue Revised Statutes of Nebraska, is amended to read:

79-1022.02 Notwithstanding any other provision of law, the certification of state aid pursuant to section 79-1022 to be paid to school districts during school year 2008-09 and the certification of applicable allowable growth rates pursuant to section 79-1026 for school fiscal year 2008-09 are 2010-11 is null and void with regard to the total state aid to be paid during school fiscal year 2010-11. State aid to be paid during such school year and the certifications pursuant to section 79-1022 shall be recertified and certifications pursuant to section 79-1023 shall be certified on or before April 30, 2008, or the fifteenth day after April 3, 2008, whichever occurs later, for the purpose of determining federal Education Jobs Fund allocations and adjusting the total state aid to be paid to include such allocations on or before March 1, 2011, using data sources as they existed on February 1, 2008-March 10, 2010.

Sec. 8. Section 79-1023, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1023 (1) On or before March 10, 2010, on or before ~~April~~ July 1, 2011, and on or before March 1 of each year thereafter, the department shall determine and certify to each school district the maximum general fund budget of expenditures minus the special education budget of expenditures for the immediately following school fiscal year.

(2) Except as provided in section 79-1028.01, no school district shall have a general fund budget of expenditures minus special grant funds and the special education budget of expenditures more than the greater of (a) the product of the difference of the general fund budget of expenditures minus special grant funds and the special education budget of expenditures for the immediately preceding school fiscal year multiplied by (i) except as otherwise provided in subdivision (a)(ii) of this subsection, the sum of one plus the local system's applicable allowable growth rate or (ii) for school fiscal year 2010-11, the sum of one plus seventy-five hundredths of one percent plus the local system's applicable allowable growth rate or (b)(i) except as otherwise provided in subdivision (b)(ii) of this subsection, the difference of one hundred twenty percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year or (ii) for school fiscal years 2009-10 and 2010-11, the difference of one hundred sixteen and fifteen-hundredths percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year.

Sec. 9. Section 79-1026.01, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1026.01 For school fiscal year 2008-09 and each school fiscal year thereafter, on or before March 10, 2010, on or before ~~April~~ July 1, 2011, and on or before March 1 of each year thereafter, the department shall determine and certify to each Class II, III, IV, or V district an applicable allowable growth rate carried out at least four decimal places as follows:

(1) The department shall establish a target budget level range of general fund operating expenditure levels for each school fiscal year for each school district which shall begin at twenty percent less than the school district's formula need and end at the school district's formula need. The beginning point of the range shall be assigned a number equal to the maximum allowable growth rate established in section 79-1025, and the end point of the range shall be assigned a number equal to the basic allowable growth rate

as prescribed in such section such that the lower end of the range shall be assigned the maximum allowable growth rate and the higher end of the range shall be assigned the basic allowable growth rate; and

(2) For each school fiscal year, each school district's general fund operating expenditures shall be compared to its target budget level along the range described in subdivision (1) of this section to arrive at an applicable allowable growth rate as follows: If each school district's general fund operating expenditures fall below the lower end of the range, such applicable allowable growth rate shall be the maximum growth rate identified in section 79-1025. If each school district's general fund operating expenditures are greater than the higher end of the range, the school district's allowable growth rate shall be the basic allowable growth rate identified in such section. If each school district's general fund operating expenditures fall between the lower end and the higher end of the range, the department shall use a linear interpolation calculation between the end points of the range to arrive at the applicable allowable growth rate for the school district.

Sec. 10. Section 79-1027, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1027 No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before March 10, 2010, on or before ~~April~~ July 1, 2011, and on or before March 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

Sec. 11. For school fiscal year 2010-11, the federal Education Jobs Fund allocation shall equal any increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011. Such allocation shall only be payable upon meeting the requirements of this section, including approval by the Governor or his or her designee of either an application pursuant to section 79-1028.02 or an application for funding filed pursuant to this section which meets the requirements of the federal American Recovery and Reinvestment Act of 2009, signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district. A school district shall account for, report, and spend such allocation as required by section 101 of Public Law 111-226. Such allocation shall not be considered special grant funds and shall be considered state aid for all purposes except as otherwise provided in this section and section 101 of Public Law 111-226. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

Sec. 12. Section 79-1028.02, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1028.02 For each of school fiscal years 2009-10 and 2010-11, the American Recovery and Reinvestment Act percentage shall equal the amount of

funding from the federal American Recovery and Reinvestment Act of 2009 to be distributed through the Tax Equity and Educational Opportunities Support Act for such school fiscal year divided by the total equalization aid to be distributed pursuant to the Tax Equity and Educational Opportunities Support Act for such school fiscal year. For each school district, the American Recovery and Reinvestment Act allocation shall equal the equalization aid to be distributed to the school district for such school fiscal year multiplied by the American Recovery and Reinvestment Act percentage for such school fiscal year. Such allocation shall only be distributed upon filing of an application signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district, which application meets the requirements of the federal American Recovery and Reinvestment Act of 2009 and is approved by the Governor or his or her designee. A school district shall account for, report, and spend such allocation as required by the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be considered a special grant fund and shall be considered state aid for all purposes except as otherwise provided in this section and the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

Sec. 13. Section 79-1031.01, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-1031.01 The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before ~~March 10, 2010, or on or before April 1, 2011,~~ March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, and on or before March 1 for each ensuing school fiscal year thereafter in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

Sec. 14. Original section 79-1022.02, Reissue Revised Statutes of Nebraska, and sections 79-1001, 79-1003, 79-1007.07, 79-1007.09, 79-1008.01, 79-1022, 79-1023, 79-1026.01, 79-1027, 79-1028.02, and 79-1031.01, Revised Statutes Cumulative Supplement, 2010, are repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.